

FILED

OCT - 4 2022

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DWM
DEPUTY CLERK

CARL A. WESCOTT
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in propria persona
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CARL A. WESCOTT,

Plaintiff,

vs.

MR. WILLIAM "RANDY" RUSS, et al.

Defendants.

Civil Action No. 1:22-CV-00785 - LY

**PLAINTIFF'S RULE 15(a)(1)(B)
AMENDMENT OF HIS LEGAL
COMPLAINT**

In this brief, Plaintiff Carl A. Wescott, proceeding *pro se*, invokes his right to amend the instant legal complaint. Defendants had served their *Motion to Dismiss* on September 7th, 2022. The Plaintiff responded in opposition to *Defendants' Motion to Dismiss* in his parallel-filed *Plaintiff's Response in Opposition to Defendants' Motion to Dismiss*.

After a pithy case summary, the Plaintiff will then review the applicable legal standard for amended pleadings in Rule 15, and cite the related facts for the instant case, supported by his affidavit. The Plaintiff will then conclude by timely invoking his right under Fed. R. Civ. P Rule 15(a)(1)(B) to amend his legal complaint.

The Plaintiff is also serving his Plaintiff's Verified Amended Legal Complaint for Breach of Contract, Promissory Fraud, Negligent Representation, Promissory Estoppel, Negligence, Abuse of Process, and an Accounting upon Defendants via their counsel. The Plaintiff, a legal layperson,

1 believes that he does have the absolute right to amend his legal complaint under Rule 15(a)(1)(B),
2 and in his letter to the Clerk of the Court, has requested that the clerk file and docket Plaintiff's
3 Verified Amended Legal Complaint.

4
5 **Concise Case Summary**

6 The Plaintiff formerly owned a company that owned two beach properties. The Plaintiff had
7 sold the properties to the Defendants (with the company if they so desired), as per the original two
8 written contracts formed between the parties and early modifications. In 2018 or 2019, Defendants
9 transferred the title to the properties, or should have made said transfers with Plaintiff's power of
10 attorney. However, the Defendants have breached their contracts by not paying the Plaintiff. Mr.
11 Russ, as agent for his partner Mr. Maksymuik and their partnership, has made many lulling
12 promises, has made many promises to pay, and has provided loans to the Plaintiff which were due
13 to unwind when Defendants had made their full payments owing. The most recent promise to pay
14 amounts owing in full came in April 2022, forming a new oral contract at that point, documented in
15 writing. More recently, in June 2022, Mr. Russ, as agent for his partner, their partnership, and his
16 and his partner's companies, repudiated the parties' contract and/or his desire or ability to pay what
17 he owes. The properties are known between the Parties by shorthand names "P2" and "P3". The
18 Defendants owe the Plaintiff over US \$2 million before pre-judgment interest, consequential
19 damages, and the Plaintiff's requested exemplary damages, given the extreme circumstances herein.
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Memorandum of Points and Authorities
LEGAL STANDARDS – Rule 15

Fed. R. Civ. P. Rule 15 provides:

Rule 15 – Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) **if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.**

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires. *Fed. R. Civ. P., Rule 15*, **bolding emphasis added.**

The attendant facts related to Rule 15(a)(1)(B)

Defendants served their Motion to Dismiss on September 7th, 2022, using certified mail, to the Plaintiff's home in Scottsdale (Exhibit A, *Plaintiff's Sworn Affidavit*, and Sub-Exhibit 1).

The Plaintiff has been away from his home the last three (3) weeks and was unaware of the Motion to Dismiss until last week (Exhibit A, *Plaintiff's Sworn Affidavit*).

The Plaintiff uses the USPS' Informed Delivery service which allows him to view most of the mail that is about to be delivered remotely (Exhibit A, *Plaintiff's Sworn Affidavit*).

The Plaintiff cannot open his mail when not home. The Plaintiff contacted Mr. Robert Castle last week, asking for a copy of the related filing (Exhibit A, *Plaintiff's Sworn Affidavit*).

Mr. Castle emailed the Plaintiff the Motion to Dismiss five (5) days ago, on Friday, September 23rd, 2022, at 1:59 pm Texas time (Exhibit A, *Plaintiff's Sworn Affidavit*).

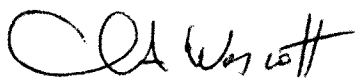
1 Though the Plaintiff has only recently read the *Motion to Dismiss*, he wished to remain
 2 within the strictures of Rule 15(a)(1)(B), and thus is serving Plaintiff's Rule 15(a)(1)(B) Motion to
 3 Amend Legal Complaint and related documents upon Defendants (via their attorneys) and upon the
 4 Court today, September 28th, 2022. Today, September 28th, 2022, is twenty-one (21) days after the
 5 original service of the paper copy of the Motion to Dismiss (Exhibit A, *Plaintiff's Sworn Affidavit*).
 6

7 **The Plaintiff's Amended Legal Complaint**

8 The Plaintiff hereto invokes his right to amend under *Fed. R. Civ. P. Rule 15(a)(1)(B)*. The
 9 Plaintiff brings this amendment ("the Amendment") in good faith. Using the same set of facts but
 10 filling in a few previously absent details, the Plaintiff believes that his Amendment more clearly
 11 articulates the circumstances of the controversy he is embroiled in with Defendants. The Plaintiff
 12 believes he has strengthened the legal foundation for his alleged causes of action and the attendant
 13 elements that will need to be demonstrated and proven by his future attorney at jury trial.
 14

15 The Plaintiff has been harmed by the tortious acts and non-acts of the Defendants. Utilizing
 16 his Constitutionally-protected petitioning rights, the Plaintiff seeks his day in Court and a fair
 17 adjudication of the parties' dispute based on the merits. Hopefully, the Amendment will assist both
 18 the Court and the future jury in fairly adjudicating the instant case.
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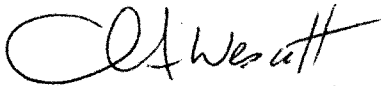
21 RESPECTFULLY SUBMITTED

22
 23 

24 Carl A. Wescott
 25 8210 E. Via de la Escuela
 26 Scottsdale, Arizona 85258
 CARLWSOJ@GMAIL.COM

CERTIFICATE OF SERVICE

I, Carl A. Wescott, do hereby certify under penalty of perjury that today, September 28th, 2022, pursuant to the parties' bilateral electronic service agreement, I served these documents upon Defendants via their attorneys Mr. Luke Wolford, esq. and Mr. Robert Castle, esq., by emailing them.



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Pro se Plaintiff

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7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF TEXAS
10 AUSTIN DIVISION

11 CARL A. WESCOTT,

12 Plaintiff,

13 vs.

14 MR. WILLIAM "RANDY" RUSS, et al.

15 Defendants.

Civil Action No. 1:22-CV-00785 - LY

**EXHIBIT A: SWORN AFFIDAVIT
OF CARL A. WESCOTT**

16 I, Carl A. Wescott, first being duly sworn, affirm on oath, under the penalty of perjury of the
17 laws of Texas and the United States of America:

- 18 1. I am the Plaintiff in the case at bar.
19 2. I am fifty-five (55) years old and if called upon to do so I would testify competently and
20 truthfully as followed below.
21 3. In the meantime, my written testimony under the same oath is as follows:

22 **My legal complaint**

- 23 4. All the facts in my original legal complaint are true.
24 5. Any beliefs and allegations stated, I believe to be true.
25 6. I'm amending my legal complaint in good faith.
26

My plan to hire an attorney, though I cannot afford one at present

7. Long ago, I had significant assets, but after I made a series of poor decisions, my now ex-wife and I filed for chapter 7 bankruptcy in 2012.

8. I've struggled without much income for the past decade.

9. I'm a legal layperson, but cannot afford an attorney at present, and thus filed the case at bar *in propria persona*.

10. I plan to hire an attorney for this case, when I can afford one, or when I can get an attorney to represent me on contingency.

11. I had no desire to file this lawsuit but filed initially hoping to bring the Defendants to the table and work out a settlement for the monies owed to me.

12. I still hope that we can work out a settlement rather than go all the way to jury trial.

My misplaced trust in Defendant Mr. Russ and the impact of not paying me

13. Mr. Maksymuik and I are not particularly fond of one another, but I had trusted Mr. Russ.

14. Unfortunately, I've discovered some rather disheartening things about Mr. Russ and Mr. Maksymuik that have shattered my faith and my trust in Mr. Russ.

15. Knowing what I know now, I'm not sure I would have given my power of attorney so that Defendants could transfer the title to the two relevant years ago.

16. The properties were and are worth more to the Defendants than to anyone else, but I should have done a better job of protecting myself from parties I now know were not deserving of my trust.

17. In any case, the Defendants have had control of my former beach properties for years.

1 18. The Defendants are using the beach, including pictures and video of my two former beach
2 properties, to sell property at their Las Olas development.

3 19. But yet, other than relatively minor sums advanced mostly by Mr. Russ, the Defendants
4 have not honored our contract and paid what they owe to my former entity, nor to me.

5 20. I believe the Defendants have the means to pay me for the two properties I sold them, as per
6
7 our legally-binding contracts and modifications thereof.

8 21. The Defendants may not have all the monies owed liquid in a bank account to pay me the
9 monies they owe me, but I am quite positive that the Defendants have the assets to honor
10 their contracts with me.

11 22. What's worse, Mr. Russ, at least, knows the relevant facts about my situation, that I've been
12 living with significant constraints in my life due to not having money.

13 23. The Defendants' not paying me is negatively impacting others that I care dearly about, such
14 as my children. I owe significant amounts of Child Support on their behalf to their mother.

15 24. Mr. Russ knows the impact the Defendants' not paying me has had and is having upon me
16 and others.

17
18
19 **The facts relevant to the invocation of my right to amend under Rule 15(a)(1)(B)**

20 25. Defendants served their Motion to Dismiss on September 7th, 2022, using certified mail, to
21 my home in Scottsdale (Sub-Exhibit "1", the postmark for their certified mail).

22 26. I have been away from my home the last three (3) weeks and was unaware of the Motion to
23 Dismiss until last week.
24
25
26

1 27. I contacted Mr. Robert Castle, esq. last week, asking for a copy of whatever filing was made
2 and served upon me by certified mail.

3 28. Mr. Castle emailed me the Motion to Dismiss five (5) days ago, on Friday, September 23rd,
4 2022, at 1:59 pm Texas time.

5 29. Though I only recently read the *Motion to Dismiss*, I wanted to clearly remain within the
6 strictures of Rule 15(a)(1)(B).

7 30. Thus, I served my *Rule 15(a)(1)(B) Motion to Amend Legal Complaint* and related
8 documents upon Defendants (via their attorneys) and upon the Court today, September 28th,
9 2022.

10 31. Luckily, I am within both the written constraints of Rule 15(a)(1)(B) and the spirit of the
11 Rule in my serving my Motion and my Response within twenty-one (21) days.

12 32. The Defendants have raised some valid points and deficiencies in the way I originally
13 drafted the instant complaint.

14 33. I believe I've addressed theses issues and made my Amended complaint stronger.

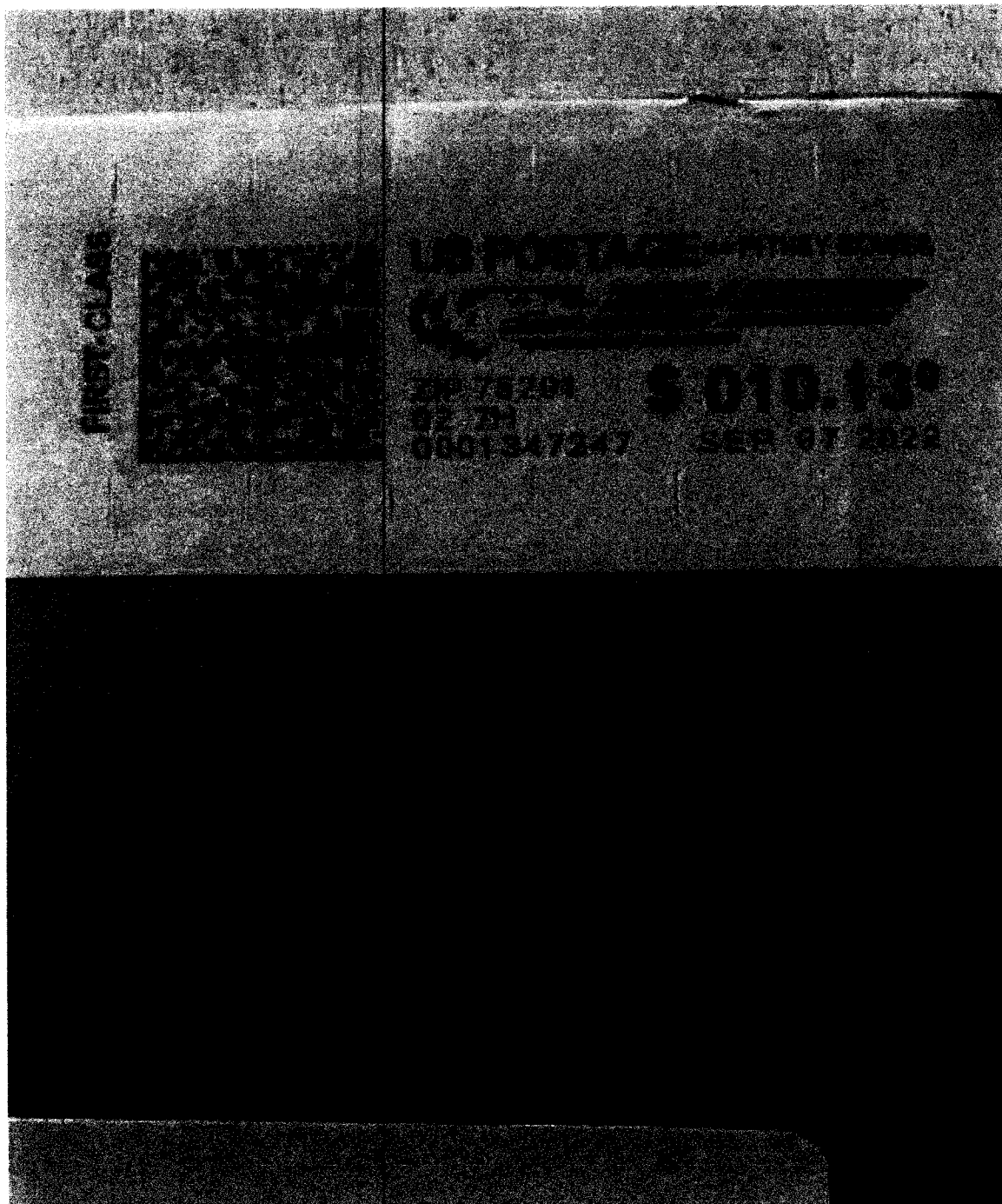
15 34. Hopefully the legal complaint document now has more clarity, too.

16
17
18
19 FURTHER AFFIANT SAYETH NAUGHT

20
21 

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24 Scottsdale, Arizona 85258
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26

SUB-EXHIBIT "1"



564371X4X3XPR
CARLA WESCOTT
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Scottsdale, AZ 85258



First Class

Accepted:

9/28/22, 10:30 PM (EDT-04:00)

1*****SNGLP 480

Clerk of the Court
United States District Court
501 W 5th St Ste 1100
Austin, TX 78701-3812

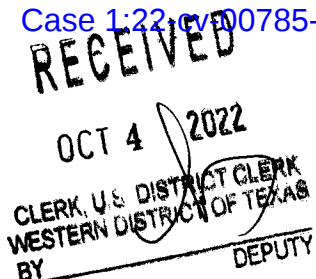


Document Information:

15 pages in the enclosed document

15 single sided sheets of paper

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September 28th, 2022

Clerk of the Court
United States District Court
District of Texas - Western District of California
Austin Courthouse

United States District Court
Clerk's Office
501 West Fifth Street, Suite 1100
Austin, Texas 78701

Re: Wescott versus Russ, et al.

Dear Clerk:

Thanks for your help filing/docketing my legal complaint, Wescott versus Russ, et al. in July.

Would you kindly also file/docket the attached documents, too?

As per the certificate of service, they've already been served upon Defendants in the care of their attorneys, pursuant to an electronic service agreement.

Thank you

Sincerely

Carl A. Wescott <signed>

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